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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/613,827  | 07/03/2003  | Kate E. Nordland     | 47097-01251USPT     | 6795             |
| 28763   | 7590        | 08/25/2005           | EXAMINER            |                  |
| WINSTON & STRAWN LLP<br>1700 K STREET, N.W.<br>WASHINGTON, DC 20006 |             |                      | NGO, LIEN M         |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3727                |                  |

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/613,827

Applicant(s)

NORDLAND ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 14-18 and 33-54 is/are pending in the application.
- 4a) Of the above claim(s) 33-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 14-18 and 44-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/4/05 has been entered.

***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed 8/4/05, have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121 (a) (6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the container and the lid, each comprising three compartments having two identical compartment and one larger compartment, and four ventable areas located on sidewalls of the larger compartment, as in figs. 5-7.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The new proposed figs. 5-7 are disapproved. Therefore, the "ventable are is formed in the second sidewall" (claim 44), "a plurality of compartments", "as least one ventable area aligned with at least one of the plurality of compartments" (claim 53), and "at

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least one ventable are is aligned with each compartment” (claim 54) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The amendment filed 8/4/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the

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invention. The added material which is not supported by the original disclosure is as follows: "a compartment container is used such as that depicted in fig. 5-7".

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, 11, 14, 16-18, 45- 51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Commisso (3,955,710). Commisso discloses, in figs.1-3, a venting container made from a polymeric foam, a lid having ventable areas 16 formed by perforation cuts (see col. 1, lines 30-31, and col. 2, lines 20-22).

To the degree it can be argued that Commisso does not disclose the cut including a second interruption to defining a frangible portion and the cut being an unthrough cut on the lid. It would have been an obvious matter of design choice to make the perforation cuts in Commisso ventable areas as claimed, since such modification would have involved a mere change in the size of a component (size of the perforation cut). A change in size is generally recognized

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as being within the level of ordinary skill in the art In re Rose, 105 USPQ 237 (CCPA 1955)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 11, 14-18 and 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al. (3,851,789) in view of Commisso. Case discloses, in figs 1 and 7 a polymeric foam container having a base, a lid and a hinged, and the lid being releasably latched to the base.

Case does not disclose the lid comprising ventable areas as claimed.

Commisso teaches polymeric foam container having a lid including ventable areas as claimed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Case lid with ventable areas as claimed, as taught by Commisso, in order to provide ventilation and finger holes for the container.

5. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Commisso and further in view of Vadney (5,947,321), or Parr, Jr. et al (4,989,748).

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Commisso et al. does not teach the ventable area formed in the lid sidewall.

Vadney or Part, Jr. teaches a ventable area formed in a lid sidewall.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to make the ventable area in Commisso in the lid sidewall, as teach by Vadney or Parr, Jr., in order to have the air vent in the sidewall of the lid.

6. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al in view of Commisso and further in view of Terauds (4,535,889) or Vadney (5,947,321).

Case et al. in view of Commisso does not disclose the ventable area disposed in at least one corner of the lid.

Terauds (fig. 1) or Vadney (fig.1) teaches a ventable area disposed in at least one corner of a lid.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ventable area in the lid of Case et al. in view of Commisso being disposed in at least one corner of the lid, as taught by Terauds or Vadney, in order to facilitate the venting of the lid.

7. Claim 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al in view of Commisso and further in view of Leong (4,530,440)

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Case et al. in view of Commisso does not disclose the container comprising a plurality of compartments.

Leong teaches a container having a plurality of compartments.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container in Case et al. in view of Commisso having a plurality of compartments, as taught by Leong, in order to store different food in separate compartments.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-9, 11, 14-18, and 44-54 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NATHAN NEWHOUSE can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

August 22, 2005

